



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

Ms. Allyn G. Turner, Director
Division of Water Resources
West Virginia Department of Environmental Protection
1201 Greenbrier Street
Charleston, WV 25311

JUL 30 2002

Dear Ms. Turner:

On May 24, 2002, the Environmental Protection Agency (EPA) issued a general objection to National Pollutant Discharge Elimination System (NPDES) Draft Permit WV1017021, Modification No.1, for Hobet Mining's proposed Spruce No.1 Surface Mine. EPA's primary concern was compliance of discharges with the West Virginia water quality standards approved by EPA under the Clean Water Act (CWA). The general objection was issued in order to obtain a time extension for obtaining and reviewing additional information and for providing a final determination on issuance of a specific objection.

This letter is notification of EPA's specific objection to issuance of the draft NPDES permit, pursuant to Section 402(d)(2), 33 U.S.C. § 1342(d)(2), due to a potential that discharges from the mining activity will cause an exceedance of the West Virginia water quality standards. Described below are details on EPA's rationale for issuing a specific objection, conditions for withdrawing the objection, and general background information.

Background - Proposed Project and Draft NPDES Permit

The proposed Spruce No.1 Surface Mine is located near Blair, Logan County, West Virginia and covers a 2,914 acre area. It includes five proposed valley fills, the largest being about one and one-half miles long and located on Pigeonroost Branch. The draft NPDES permit covers 26 discharges, including discharges from sedimentation ponds treating drainage from four of the five valley fills. These four fills are located on Oldhouse Branch, White Oak Branch, Pigeonroost Branch, and an unnamed tributary of Pigeonroost Branch. The proposed fifth fill is in the Seng Camp Creek watershed and is served by ponds currently covered under a separate NPDES permit for adjacent surface and deep mines. All streams in the proposed mining area flow to Spruce Fork which is in the Coal River drainage basin.

The draft NPDES permit is a modification of a permit issued on January 11, 1999 for discharges from a proposed smaller mining area. That mining area included three fills, rather than the five fills currently proposed, and two of the three fills were much shorter in length than currently proposed. The draft permit includes modifications of the numbers and locations of the proposed discharges and changes to effluent limits. Revised effluent limits for 10 of the 26



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proposed discharges, including discharges from proposed sedimentation ponds serving valley fills, comply with the anti-degradation requirements of the West Virginia water quality standards for iron, manganese, and aluminum. These limits are calculated in accordance with Tier 2.5 procedures to assure that no more than 10 percent of the assimilative capacity of the receiving streams is utilized. Most of the other conditions in the 1999 permit are still applicable, including special conditions relating to stream monitoring.

Rationale for Specific Objection

The specific objection is based on results of recent stream studies conducted by EPA in areas where mountaintop mining has occurred in West Virginia. These studies compared monitoring results of streams with valley fills to streams without valley fills, including three streams located within the proposed mining area. The study results indicated impairment of aquatic life and significantly higher levels of selenium, sulfates, and conductivity for streams with valley fills. The study implies that discharges from sedimentation ponds serving valley fills at the proposed Spruce No.1 Surface Mine have a potential of causing stream impairment and exceedance of water quality standards. Compliance with water quality standards is a requirement of NPDES permit regulation 40 CFR 122.4(d) and Section 301 of the Clean Water Act, 33 U.S.C. § 1311.

EPA is concerned about the potential of stream impairment and water quality standards exceedance resulting from discharges from sedimentation ponds serving the valley fills in Oldhouse, White Oak, and Pigeonroost Branches and the unnamed tributary of Pigeonroost Branch. Although the West Virginia Department of Environmental Protection has imposed very environmentally responsible effluent limitations for iron, manganese, and aluminum in the draft NPDES permit, EPA's stream studies indicate a potential for impairment of aquatic life downstream from the proposed valley fills and potential for exceedance of selenium water quality standards. It is apparent that there is a potential for stream impairment at the proposed Spruce No.1 Surface Mine due to drainage from the valley fills, but the extent of any impairment and feasible measures for minimizing detrimental impacts is not known at this time.

Conditions Necessary for Withdrawal of the Specific Objection

Considering the above, EPA has determined that additional monitoring to assess any stream impairment is necessary as well as evaluating feasible measures for minimization of possible detrimental impacts. Therefore, EPA will remove its specific objection to draft NPDES Permit WV1017021, Modification No.1, if the following four conditions are satisfied:

1. Permit monitoring conditions, satisfactory to EPA, for selenium, conductivity, and sulfates must be included for Oldhouse, White Oak, and Pigeonroost Branches and for sedimentation pond discharges serving valley fills on these streams, as well as the sedimentation pond serving the valley fill on the unnamed tributary of Pigeonroost Branch.

2. The biological monitoring plan for Oldhouse, White Oak, and Pigeonroost Branches, as described in the special conditions of the 1999 permit, must be reevaluated and modified where determined necessary by EPA in order to provide a comprehensive assessment of aquatic life impacts and any correlation with sedimentation pond effluent levels.

3. A condition must be included in the permit which requires a feasibility study of techniques for handling spoil material and drainage, including the consideration of treatment, which would minimize the potential for stream impairment and elevated levels of selenium, conductivity, and sulfates in streams below valley fills, during both operation and reclamation. The study must also include an evaluation on the feasibility of identifying and special handling selenium-bearing minerals to minimize selenium levels in drainage through valley fills. A report on the study findings must be provided within a year after permit issuance and may be used in consideration of future permit requirements.

4. Condition D.15 in the 1999 NPDES permit applies to proposed sedimentation ponds below valley fills in Pigeonroost and Oldhouse Branches. This condition required that flow characteristics downstream from the ponds be approximately equal to pre-mining conditions to the extent feasible. This condition must be expanded to address the two additional proposed sedimentation ponds serving valley fills in White Oak Branch and the unnamed tributary of Pigeonroost Branch.

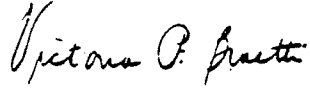
As indicated above, an existing sedimentation pond under a separate permit, (NPDES Permit WV1013289), is proposed to serve Valley Fill No.1 in the Seng Camp Creek watershed. Upon expiration and renewal of this permit, EPA expects it to include appropriate effluent limits which comply with water quality standards and avoid causing or adding to impairment of downstream aquatic life.

In addition, it is noted that Condition D.12 in the 1999 NPDES permit requires that discharges of fill material in connection with Spruce No.1 Surface Mine be authorized by the U.S. Army Corps of Engineers (Corps) under a CWA Section 404 permit. Condition D.12 refers to discharges of fill material generally, without distinguishing between the discharges that result in the five proposed valley fills and other types of discharges, such as those necessary to construct impoundments for the creation of the sedimentation ponds. Please be aware that EPA considers such discharges to be discharges of pollutants into waters of the United States which require an appropriate permit under the CWA.

Pursuant to 40 CFR 123.44(e), a public hearing may be requested by you within 90 days of receipt of this letter and shall be held if you request it. If a public hearing is held and EPA Region III does not withdraw its objection, you must submit a revised permit to meet this objection within 30 days of the date of EPA Region III's notification that it will not withdraw its objection. If no public hearing is requested, you must resubmit a permit revised to meet this objection within 90 days of receipt of this letter. Failure to resubmit a revised permit within the appropriate time frames may cause exclusive authority to issue the permit to pass to EPA Region III, pursuant to 40 CFR 123.44(h)(3).

If you have any questions or if EPA can be of some assistance in this matter, please contact Mr. Dan Sweeney at (215) 814-5731 or sweeney.dan@epa.gov.

Sincerely,



for Jon M. Capacasa, Acting Director
Water Protection Division

cc: John McDaniel, Hobet Mining
Ken Politan, WVDEP